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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 190905-0022]

RIN 0648-BI68

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic;
Coastal Migratory Pelagics Resources in the Gulf of Mexico and
Atlantic Region; Framework Amendment 6**

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in Framework Amendment 6 to the Fishery Management Plan (FMP) for Coastal Migratory Pelagics (CMP) of the Gulf of Mexico (Gulf) and Atlantic Region (FMP), as prepared by the South Atlantic Fishery Management Council (Council). This final rule revises the Atlantic migratory group king mackerel commercial trip limits in the Atlantic southern zone during the March through September fishing season. The purpose of this final rule is to support increased fishing activity and economic opportunity while continuing to constrain harvest to the annual catch limit and providing for year-round access for the commercial sector.

DATES: This final rule is effective [*insert date of publication in the Federal Register*].

ADDRESSES: Electronic copies Framework Amendment 6 may be obtained from the Southeast Regional Office Web site at <https://www.fisheries.noaa.gov/action/framework-amendment-6-atlantic-king-mackerel-commercial-trip-limits>.

FOR FURTHER INFORMATION CONTACT: Karla Gore, NMFS Southeast Regional Office, telephone: 727-551-5753, or email: karla.gore@noaa.gov.

SUPPLEMENTARY INFORMATION: The CMP fishery in the Atlantic region is managed under the FMP and includes king mackerel, Spanish mackerel, and the Gulf cobia stock, which ranges from Texas through the east coast of Florida. The Council and the Gulf of Mexico Fishery Management Council (Gulf Council) jointly manage the FMP. The FMP was prepared by both Councils and is implemented by NMFS through regulations at 50 CFR part 622 under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Council and Gulf Council can develop and approve individual framework amendments to the FMP for certain actions that are specific to each region; however, plan amendments must be approved by both Councils.

On March 26, 2019, NMFS published a proposed rule for Framework Amendment 6 and requested public comment (84 FR 11275). The proposed rule and Framework Amendment 6 outline the

rationale for the action contained in this final rule. A summary of the management measure described in Framework Amendment 6 and implemented by this final rule is described below.

The Atlantic migratory group of king mackerel (Atlantic king mackerel) is divided into a northern zone and a southern zone. The fishing year for the commercial sector for Atlantic king mackerel in both the northern and southern zones is March 1 through the end of February. The current trip limit system for the Atlantic southern zone (the EEZ from the North Carolina/South Carolina boundary to the Miami-Dade/Monroe County, FL, boundary (25°20'24" N)) was implemented on May 11, 2017, through Amendment 26 to the FMP (68 FR 17387, April 11, 2017). The Atlantic southern zone has two commercial seasons, March 1 through September 30 (Season 1), and October 1 through the end of February (Season 2), each with its own seasonal quota allocations: 60 percent of the zone's commercial quota is allocated for Season 1 and 40 percent is allocated for Season 2. Any unused quota from Season 1 transfers during the fishing year to Season 2. There is no provision to allow the carryover of any unused quota at the end of Season 2. When the quota for a season is reached or expected to be reached, commercial harvest of king mackerel in the Atlantic southern zone is prohibited for the remainder of the season.

In addition, the southern zone is further divided into two areas with different trip limits. This rule does not revise the current 3,500 lb (1,588 kg) year-round trip limit for Atlantic migratory group king mackerel north of the Flagler/Volusia County, FL, boundary in the southern zone. In the area between the Flagler/Volusia County, FL, boundary ($29^{\circ}25'$ N. lat.), and the Miami-Dade/Monroe County, FL, boundary ($25^{\circ}20'24''$ N. lat.), the trip limit is 50 fish during March in Season 1. From April 1 through September 30 during Season 1, the trip limit is 75 fish, unless NMFS determines that 75 percent or more of the Atlantic southern zone quota for the first season has been landed, then the trip limit is 50 fish.

Commercial fishermen from Florida's east coast, primarily those from south of Flagler/Volusia County, FL, expressed concern to the Council about the current commercial trip limits for king mackerel in some of the areas in the Atlantic southern zone, especially the Season 1 (March through September) trip limits in the EEZ off Volusia County, FL. Comments from stakeholders indicated that commercial fishermen operating out of Volusia County, FL, travel farther offshore than elsewhere off the east coast of Florida to target king mackerel and often complete multi-day commercial trips. Commercial fishermen who target king mackerel off Volusia County, FL, indicate that the 50-fish commercial trip limit during the month of March makes it

challenging to earn enough money to pay for the cost of a trip, potentially causing undue hardship. At their April 2017 meeting, the Council's Mackerel Cobia Advisory Panel recommended that the Council review the commercial trip limits in place for the Atlantic southern zone and consider a different trip limit that would support the concerns of the commercial fishermen operating out of Volusia County, FL, while still allowing year-round access to king mackerel by the commercial sector. The Council then developed, and subsequently approved, Framework Amendment 6 to the FMP. Framework Amendment 6 would revise some of the commercial trip limits for Season 1 (March 1 through September 30) in the southern zone, but would not revise the commercial trip limits for Season 2 (October 1 through the end of February).

Management Measure Contained in this Final Rule

This final rule revises the Atlantic king mackerel commercial trip limits in the southern zone in the EEZ south of the Flagler/Volusia County, FL, boundary during Season 1. The trip limit is increased from 50 to 75 fish for the month of March in the EEZ between the Flagler/Volusia County, FL, boundary and the Volusia/Brevard County, FL, boundary. The trip limit is also increased from 50 to 75 fish for the month of March in the EEZ between the Volusia/Brevard County, FL, boundary and the Miami-Dade/Monroe County, FL boundary. This

final rule also increases the trip limit in the EEZ off Volusia County (between Flagler/Volusia County, FL, boundary and the Volusia/Brevard County, FL, boundary) from April 1 through September 30 from 75 fish to 3,500 lb (1,588 kg).

In summary, when this final rule is effective, the commercial trip limits for Atlantic king mackerel throughout the southern zone are described in the following:

North of the Flagler/Volusia County, FL (29°25' N. lat.), boundary (29°25' N. lat.) the limit is 3,500 lb (1,588 kg), year-round.

In the EEZ between the Flagler/Volusia County, FL, boundary (29°25' N. lat.) and the Volusia/Brevard County, FL, boundary (29°25' N. lat.), in the month of March, the trip limit will be 75 fish; from April through September, the trip limit will be 3,500 lb (1,588 kg); from October through January, the limit is 50 fish; and for the month of February the limit is 50 fish, unless NMFS determines that less than 70 percent of the commercial quota for the southern zone's second season has been landed, then the trip limit would be 75 fish.

In the EEZ between the Volusia/Brevard County, FL, boundary (28°47'48" N. lat.) and the Miami-Dade/Monroe County, FL boundary (25°20'24" N. lat.), in the month of March, the trip limit will be 75 fish; from April through September the limit is 75 fish, unless NMFS determines that less than 75 percent of the

commercial quota for the southern zone's first season has been landed, then the trip limit is 50 fish; from October through January, the limit is 50 fish; and for the month of February, the limit is 50 fish unless NMFS determines that less than 70 percent of the second season quota has been landed, then the trip limit would be 75 fish.

The revision to the trip limit in the southern zone is expected to provide additional fishing and economic opportunity to king mackerel fishermen in the southern zone and is not expected to negatively impact the Atlantic king mackerel stock.

Comments and Responses

NMFS received seven comments during the public comment period on the proposed rule for Framework Amendment 6. Five of these comments were in support of the actions in the framework amendment. NMFS acknowledges the comments in favor of all or part of the actions in Framework Amendment 6 and the proposed rule, and agrees with the comments that changing the trip limits should have positive economic benefits for the fishermen; those comments are not further addressed below. One comment incorrectly described the trip limit alternatives in the framework amendment and appears to have commented based on that incorrect description. That comment is therefore not responsive to the actions contained in the proposed rule and is not responded to in this final rule. One comment suggested a

modification to how the alternatives in Framework Amendment 6 are described. This comment is summarized and responded to below.

Comment 1: Some king mackerel commercial trip limits are described in numbers of fish and others are described in pounds of allowable fish. For consistency, the king mackerel trip limits should be all described by weight instead of numbers of fish.

Response: The Council considered trip limit alternatives in Framework Amendment 6 in a combination of pounds and numbers of fish, in accordance with the advice they received from their advisory panel for this fishery. The Council used the same trip limit measurements they have used to manage this fishery since the 1990s. Currently, the commercial trip limit south of Flagler/Volusia County, Florida, is in numbers of fish, and north of Flagler/Volusia, Florida, the commercial trip limit is in pounds of fish.

Measures Contained in this Final Rule not in Framework Amendment 6

In addition to the measures described in Framework Amendment 6 to revise the Atlantic southern zone commercial trip limits, this final rule also incorporates a correction to a commercial trip limit boundary position for the Atlantic king

mackerel southern zone and updates contact information for the NMFS Office of Law Enforcement specific to Spanish mackerel transfer at sea provision.

In 50 CFR 622.385(a)(1)(ii), the final rule for Amendment 26 incorrectly specified the Miami-Dade/Monroe County, FL, boundary coordinate. That final rule incorrectly used the position for the Flagler/Volusia County, FL, boundary in one instance instead of the Miami-Dade/Monroe County, FL, coordinate. However, since that final rule was promulgated, these boundary descriptions have been updated. These new boundary descriptions are part of the revisions made in this final rule to implement Framework Amendment 6, and the previous boundary descriptions and coordinates are no longer relevant. Thus, the previous error will be superseded by the boundary descriptions and coordinates listed in 50 CFR 622.385(a)(1)(ii) of this final rule for Framework Amendment 6.

Current regulations at 50 CFR 622.377(b)(2)(vi)(C) require that if a commercially permitted Spanish mackerel vessel is allowed to and wants to transfer a portion of a gillnet at sea, they must, in part, contact the NMFS Office of Law Enforcement. The current contact information, as specified in the regulations, requires the owner or operator of both vessels involved in the transfer to contact the NMFS Office of Law Enforcement, Port Orange, FL, office at telephone number: 1-386-

492-6686. Subsequent to the publishing of the proposed rule for Framework Amendment 6, the NMFS Southeast Regional Office was notified by the NMFS Office of Law Enforcement that the NMFS Port Orange, FL, office has closed and that the Port Orange telephone number is no longer in service. Consistent with the Spanish mackerel gillnet transfer at sea provisions at 50 CFR 622.377(b)(2)(vi)(C), affected owners and operators should now contact the NMFS Office of Law Enforcement, Southeast Regional Office, St. Petersburg, FL, office at telephone number: 1-727-824-5344. In this final rule and the associated codified text, NMFS updates this contact information. No other changes are being made in this final rule for the Spanish mackerel gillnet transfer provisions.

Classification

The Regional Administrator, Southeast Region, NMFS has determined that this final rule is consistent with the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order 12866.

The Magnuson-Stevens Act provides the statutory basis for this final rule. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by this final rule.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this rule would not have a significant adverse economic impact on a substantial number of small entities. The factual basis for this determination was published in the proposed rule and is not repeated here. No significant issues were raised by public comments related to the economic impacts on small entities, and no changes to this final rule were made in response to public comments. However, the final rule incorporates a correction to a commercial trip limit boundary position for the Atlantic king mackerel southern zone, and updates contact information for the NMFS Office of Law Enforcement specific to the Spanish mackerel transfer at sea provision which was not included in the proposed rule.

A current regulation incorrectly uses the same coordinates (29°25' N. lat.) to define the Flagler/Volusia County, FL, boundary, and Miami-Dade/Monroe County, FL, boundary. The assessment of the economic impacts on small entities for the proposed rule did not repeat that error, and the correction does not invalidate the certification. In addition, the updated law enforcement contact information will have no additional impact on small entities. As a result, a final regulatory flexibility analysis was not required and none was prepared.

This final rule responds to the best scientific information available. Pursuant to 5 U.S.C. 553(d)(3), the AA finds good cause to waive the 30-day delay in the date of effectiveness of this final rule because such a delay would be contrary to the public interest. If this final rule were delayed by 30 days, king mackerel fishermen would not be able to fish under the revised, increased, commercial trip limit and realize the full level of economic opportunity this rule provides. Further, the correction to the boundary position for the Atlantic king mackerel southern zone and the update to the contact information for the NMFS Office of Law Enforcement provide accurate and beneficial information to the public, and a delay in their effectiveness would be contrary to the public interest.

In addition, because this measure increases the current Season 1 trip limit, it relieves a restriction, and therefore it also falls within the 5 U.S.C. 553(d)(1) exception to the 30-day delay in the date of effectiveness requirement. The current commercial trip limit is increased as a result of this final rule, and NMFS wants to allow king mackerel fishermen the earliest opportunity to harvest at the new trip limit, as intended by the Council in Framework Amendment 6. Waiving the 30-day delay in the date of effectiveness will allow this final rule to more fully benefit the fishery through increased fishing

opportunities as described in Framework Amendment 6 and as intended by the Council.

Accordingly, the 30-day delay in effectiveness of the measures contained in this final rule is waived.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, King mackerel, South Atlantic, Trip limits.

Dated: September 5, 2019.

Samuel D. Rauch, III,
Deputy Assistant Administrator for Regulatory Programs,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.377, revise paragraph (b) (2) (vi) (C) to read as follows:

§ 622.377 Gillnet restrictions.

* * * * *

(b) * * *

(2) * * *

(vi) * * *

(C) Prior to cutting the gillnet and prior to any transfer of Spanish mackerel from one vessel to another, the owner or operator of both vessels must contact NMFS Office for Law Enforcement, St Petersburg, Florida, phone: 1-727-824-5344.

3. In § 622.385, revise paragraphs (a) (1) (ii) introductory text and (a) (1) (ii) (A) and (B) and add paragraph (a) (1) (iii) to read as follows:

§ 622.385 Commercial trip limits.

* * * * *

(a) * * *

(1) * * *

(ii) In the area between 29°25' N. lat., which is a line directly east from the Flagler/Volusia County, FL, boundary, and 28°47'48" N. lat., which is a line directly east from the Volusia/Brevard County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts not to exceed:

(A) From March 1 through March 31--75 fish.

(B) From April 1 through September 30--3,500 lb (1,588 kg).

* * * * *

(iii) In the area between 28°47'48" N. lat., which is a line directly east from the Volusia/Brevard County, FL, boundary, and 25°20'24" N. lat., which is a line directly east from the Miami-Dade/Monroe County, FL, boundary, king mackerel in or from the EEZ may not be possessed on board or landed from a vessel in a day in amounts not to exceed:

(A) From March 1 through March 31--75 fish.

(B) From April 1 through September 30--75 fish, unless NMFS determines that 75 percent or more of the quota specified in § 622.384(b) (2) (ii) (A) has been landed, then, 50 fish.

(C) From October 1 through January 31--50 fish.

(D) From February 1 through the end of February--50 fish, unless NMFS determines that less than 70 percent of the quota specified in § 622.384(b) (2) (ii) (B) has been landed, then, 75 fish.

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